

(CNR NO.MHSNO-40006802018)
ORDER BELOW EXH.25 IN REGULAR CIVIL APPEAL NO.84 OF 2018
(Ajij Kasam Mahabri, etc Vs. Shripati Ramu Ghorpade, etc.)

01. This is an application filed by appellant for bringing legal representatives on record. The respondent has filed reply opposing the application.

02. Heard. Perused the record.

03. It is the contention of appellant that, respondent No.9 Althaf Rahiman Mahabri expired on dated 10/08/2023 during pendency of the appeal. But the appellant has not get knowledge about the death of respondent No.9 within time. Therefore, the delay is caused to bring legal representatives of deceased respondent No.9 on record which is not deliberate. Hence, appellant prayed to allow him for bringing the legal representatives of deceased respondent No.9 on record.

04. The respondents have resisted the application by filing say and denied all the contentions made in the application. However, it reveals that they have not denied the fact of death of respondent No.9 Althaf Rahiman Mahabri. It is contended that, the reason mentioned for bringing legal representatives of respondent No.9 on record is false. Therefore, the application moved by appellant is liable to be rejected. Alternatively prayed, if allowed, heavy cost be imposed.

05. Perused application, affidavit and say of other side. Perused the death extract [list Exh.22] filed by the appellant. It reveals that respondent No.9 expired on 10/08/2023. The appellant has filed this application on dated 12/03/2024. Apparently it is not filed within the stipulated period of limitation i.e. within 90 days. However, it transpires from the application that sufficient and genuine reason for not bringing

legal representative on record are explained by the appellant. The appellant has challenged the Judgment and Decree passed in R.C.S. No.18/2011, which is the suit for perpetual injunction. The appellant has right to challenge said order and decree. The proposed L.R's. are the legal heirs of deceased respondent No.9 and right to sue survives in their favour. Therefore, I hold that it will be justified to bring them on record as legal representative of deceased respondent No.9.

06. Hence, considering the discussion made above, I hold that the application deserves to be allowed in the interest of justice. In the result following order is passed.

ORDER

1. The application is allowed.
2. The appellant is permitted to bring legal representatives of deceased respondent No.9 on record within 14 days from the date of this order and carry out necessary amendment in the appeal memo.

Date :- 23/09/2024

(A. H. Kashikar)
Adhoc District Judge-1, Islampur.